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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

RALPH WILDER, Derivatively on
Behalf of SONIC SOLUTIONS, INC.

Plaintiff,
v.

ROBERT J. DORIS, MARY C. SAUER,
JAMES A. MOORER, MICHAEL C.
CHILD, ROBERT M. GREBER, PETER J.
MARGUGLIO, R. WARREN LANGLEY,
A. CLAY LEIGHTON, KIRK PAULSEN,
MICHAEL J. COSTELLO and
CHRISTOPHER A. KRYZAN,

Defendants,

and

SONIC SOLUTIONS, INC.

Nominal Defendant.

) Case No. C 07-01500 CW

)
) **MEMORANDUM OF LAW IN**
) **FURTHER SUPPORT OF**
) **PLAINTIFFS ANDREW**
) **WALTER AND JAMES**
) **FORSETH'S MOTION TO**
) **CONSOLIDATE CASES AND**
) **TO APPOINT LEAD**
) **PLAINTIFFS AND LEAD**
) **COUNSEL, AND IN**
) **OPPOSITION TO THE**
) **MOTION OF SAMMY K.**
) **DOOLITTLE AND RALPH D.**
) **WILDER**

)
) Date: August 7, 2007
) Time: 2:00 p.m.
) Before: Hon. Claudia Wilken

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS ANDREW WALTER AND
JAMES FORSETH'S MOTION TO CONSOLIDATE CASES AND TO APPOINT LEAD
PLAINTIFFS AND LEAD COUNSEL, AND IN OPPOSITION TO THE MOTION OF SAMMY K.
DOOLITTLE AND RALPH D. WILDER
CASE NO. C 07-01500 CW

1 ANDREW WALTER, Derivatively on)
 2 Behalf of Nominal Defendant SONIC) Case No. C 07-02344 CW
 3 SOLUTIONS,)
 4 Plaintiff,)
 5 v.)
 6 ROBERT J. DORIS, MARY C. SAUER,)
 7 JAMES A. MOORER, MICHAEL C.)
 8 CHILD, ROBERT M. GREBER, PETER J.)
 9 MARGUGLIO, R. WARREN LANGLEY,)
 10 A. CLAY LEIGHTON, KIRK PAULSEN,)
 11 MICHAEL J. COSTELLO and)
 12 CHRISTOPHER A. KRYZAN,)
 13 Defendants,)
 14 and)
 15 SONIC SOLUTIONS,)
 16 Nominal Defendant.)
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18 JAMES FORSETH, Derivatively on)
 19 Behalf of Nominal Defendant SONIC) Case No. C 07-03178 CW
 20 SOLUTIONS,)
 21 Plaintiff,)
 22 v.)
 23 ROBERT J. DORIS, MARY C. SAUER,)
 24 JAMES A. MOORER, MICHAEL C.)
 25 CHILD, ROBERT M. GREBER, PETER J.)
 26 MARGUGLIO, R. WARREN LANGLEY,)
 27 A. CLAY LEIGHTON, KIRK PAULSEN,)
 28 MICHAEL J. COSTELLO and)
 29 CHRISTOPHER A. KRYZAN,)
 30 Defendants,)
 31 and)
 32 SONIC SOLUTIONS,)
 33 Nominal Defendant.)
 34

35 MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS ANDREW WALTER AND
 36 JAMES FORSETH'S MOTION TO CONSOLIDATE CASES AND TO APPOINT LEAD
 37 PLAINTIFFS AND LEAD COUNSEL, AND IN OPPOSITION TO THE MOTION OF SAMMY K.
 38 DOOLITTLE AND RALPH D. WILDER
 39 CASE NO C 07-01500 CW

1 SAMMY K. DOOLITTLE, Derivatively on)
2 Behalf of Nominal Defendant SONIC)
3 SOLUTIONS,) Case No. C 07-03361 BZ
4 v. Plaintiff,)
5)
6 ROBERT J. DORIS, DAVID C. HABIGER, MARY)
7 C. SAUER, A. CLAY LEIGHTON, MARK ELY,)
8 ROBERT M. GREBER, PETER J. MARGUGLIO,)
9 and R. WARREN Langley,)
10 Defendants,)
11 and)
12 SONIC SOLUTIONS,)
13)
14 Nominal Defendant.)
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MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS ANDREW WALTER AND
JAMES FORSETH'S MOTION TO CONSOLIDATE CASES AND TO APPOINT LEAD
PLAINTIFFS AND LEAD COUNSEL, AND IN OPPOSITION TO THE MOTION OF SAMMY K.
DOOLITTLE AND RALPH D. WILDER
CASE NO C 07-01500 CW

Derivative plaintiffs Andrew Walter and James Forseth respectfully submit this memorandum of law in further support of their motion to consolidate the related actions, appoint themselves as Lead Plaintiffs and approve their selection of Lead Counsel, and in opposition to the motion filed by plaintiffs Sammy K. Doolittle and Ralph D. Wilder for their appointment as Lead Plaintiffs and appointment of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, as Lead Counsel.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A plaintiff who leads a shareholder's derivative suit occupies a position "of a fiduciary character," in which "[t]he interests of all in the redress of the wrongs are taken into his hands, dependent upon his diligence, wisdom and integrity." *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541 (1949). Thus, "[p]ursuant to Fed. R. Civ. P. 23.1, a plaintiff bringing a derivative shareholder action must be qualified to serve in a fiduciary capacity as a representative of the class of stockholders, whose interest is dependent upon the representative's adequate and fair prosecution of the action." *Bender v. Parks*, 2004 U.S. Dist. LEXIS 17090, at *11 (D.D.C. Jan. 15, 2004) (citation omitted); see *Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir. 1990) (discussing qualities necessary to satisfy adequacy of a proposed derivative plaintiff). Currently, there are two motions pending filed by: (1) plaintiffs Andrew Walter ("Mr. Walter") and James Forseth ("Mr. Forseth"), who request their appointment as Lead Plaintiffs and the appointment of their selection of the law firm of Schiffzin Barroway Topaz & Kessler, LLP ("Schiffzin Barroway) as Lead Counsel; and (2) plaintiffs Ralph Wilder ("Mr. Wilder") and Sammy Doolittle ("Mr. Doolittle"), who request their appointment as Lead Plaintiffs and the appointment of Lerach Coughlin Stoia Geller Rudman & Robbins LLP ("Lerach Coughlin") as Lead Counsel.

Here, for the reasons stated herein, of the competing lead plaintiff movants, Messrs.

¹ All movants agree that consolidation of these actions is proper, thus, that aspect of the competing motions is unopposed.

1 Walter and Forseth are most capable of “act[ing] in the stead of the corporation, as a corporate
 2 surrogate seeking vindication of a corporate right” as they will ensure that Defendants are held
 3 accountable for their improper options backdating scheme. *Sweet v. Birmingham*, 65 F.R.D.
 4 551, 553 (S.D.N.Y. 1975). In the alternative, should this Court deem it appropriate, Messrs.
 5 Walter and Forseth should be appointed as Co-Lead Plaintiffs with the other competing Lead
 6 Plaintiff movants and their counsel, Schiffrian Barroway should be appointed as Co-Lead Counsel
 7 with Lerach Coughlin.

8 **II. MESSRS. WALTER AND FORSETH SHOULD BE APPOINTED AS
 9 LEAD PLAINTIFFS**

10 In considering the appointment of a lead plaintiff in a shareholder derivative action,
 11 courts readily assess which movant will adequately serve the interests of the derivative plaintiffs
 12 and the nominal defendant. *Millman v. Brinkley*, 2004 U.S. Dist. LEXIS 20113, *8 (N.D. Ga.
 13 Oct. 1, 2004). The various factors that courts consider include: (1) the quality of the pleadings;
 14 (2) the vigorousness of the prosecution of the lawsuits; and (3) whether plaintiffs are represented
 15 by capable counsel. *Millman*, 2004 U.S. Dist. LEXIS 20113, at *9-11; *Dollens v. Zions*, 2001
 16 U.S. Dist. LEXIS 19966, *13-19 (N.D. Ill. Dec. 4, 2001). An evaluation of these factors
 17 supports the appointment of Messrs. Walter and Forseth as Lead Plaintiffs.

18 Here, within a few weeks of one another, plaintiffs Mr. Walter and Mr. Wilder each filed
 19 complaints on behalf of Sonic Solutions, Inc. (“Sonic” or the “Company”). Shortly thereafter
 20 Mr. Forseth and Mr. Doolittle also filed complaints on behalf of Sonic. Each of the complaints
 21 seeks to remedy defendants’ breaches of fiduciary duty, unjust enrichment, statutory violations,
 22 and other violations of law arising out of defendants’ conduct of authorizing the backdating of
 23 stock option grants to Sonic’s top executives at the expense of Sonic and its shareholders.
 24 However, in addition to the foregoing, Mr. Forseth’s complaint also includes a unique allegation
 25 pursuant to California Corporations Code § 600(c) for the Company’s Board of Directors’ failure
 26 to hold a statutorily required shareholder meeting within the requisite time period – an allegation
 27

1 not found in either Mr. Wilder's or Mr. Doolittle's complaints. The inclusion of this additional
 2 valuable claim not only demonstrates that the complaints filed by Messrs. Walter and Forseth are
 3 superior to those of the other competing movants' but also demonstrates Messrs. Walter's and
 4 Forseth's dedication to vigorously prosecute defendants for *all* violations of law which have
 5 caused injury to Sonic and its shareholders. Further, Messrs. Walter and Forseth, through their
 6 counsel, Schiffrian Barroway, have also hired a forensic investigator to assist in litigation strategy.
 7 Thus, for all the foregoing reasons, Messrs. Walter and Forseth should be appointed as Lead
 8 Plaintiffs.

9 **III. THE COURT SHOULD APPOINT SCHIFFRIN BARROWAY AS
 10 LEAD COUNSEL**

11 In selecting Lead Counsel, the "guiding principle" is who will "best serve the interest of
 12 the plaintiffs." *Millman*, 2004 U.S. Dist. LEXIS 20113 at * 9. Here, Schiffrian Barroway will
 13 best serve the interests of all plaintiffs. As fully set forth in Messrs. Walter's and Forseth's
 14 opening memorandum, Schiffrian Barroway has a long and proven track record of successfully
 15 prosecuting complex shareholder actions, like this one, in both state and federal courts across the
 16 country, including serving in a leadership capacity in a numerous derivative cases in the State of
 17 California. Moreover, with an office in Walnut Creek, California, Schiffrian Barroway has the
 18 distinction of being one of the leading law firms which has specialized in prosecuting claims
 19 relating to options backdating, seeking not only to hold the directors and officers responsible for
 20 their past misconduct but also to ensure that proper corporate reform is instituted so that these
 21 practices are finally eliminated. In light of their extensive record of success in shareholder
 22 litigation, their expertise in options backdating litigation, and their vigorous, high-quality
 23 prosecution of this action, the Court should appoint Schiffrian Barroway as Lead Counsel. In the
 24 alternative, Schiffrian Barroway and Lerach Coughlin should be appointed as Co-Lead Counsel as
 25 both firms have demonstrated an ability to work efficiently together in a number of similar cases
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1 based upon defendants' backdating of stock options.²

2 Dated: July 12, 2007

3 Respectfully Submitted,

4 SCHIFFRIN BARROWAY
5 TOPAZ & KESSLER, LLP

6 /s/ Alan R. Plutzik

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14 Attorneys for Plaintiffs Walter and Forseth and
15 Proposed Lead Counsel

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² See, e.g. *In re Ditech Networks, Inc., Derivative Litigation*, Master File No. C 06-06-05157 JF
23 (N.D. Cal. Nov. 29, 2006) (order appointing Schiffrin Barroway and Lerach Couglan as Co-Lead
Counsel in derivative options backdating litigation)(Winchester Decl. at Exhibit A); *Dossett v.*
24 *Cline, et al.*, Master File No. 5:06-cv-03484 JF (N.D. Cal. July 13, 2006) (same) (Winchester
Decl. at Exhibit B); *Chu v. Hughes, et al.*, Master File No. C 06-3513 JF MHP (N.D. Cal. Aug.
25 10, 2006) (same) (Winchester Decl. at Exhibit C); *Hergotz v. Sola, et al.*, Master File No. C 06-
3783 JF (N.D. Cal. Aug. 31, 2006) (same) (Winchester Decl. at Exhibit D); *Kalindjian v. Antle,*
26 *et al.*, Master File No. C 06-3440 JF (N.D. Cal. Sept. 6, 2006) (same) (Winchester Decl. at
Exhibit E).